IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.MC.No. 2358 of 2006()

CRRP.76/2004 of I ADDL. SESSIONS COURT, TRIVANDRUM

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PETITIONER: COUNTER PETITIONERS:

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1. BASTIN SABU,
   SUB INSPECTOR OF POLICE, CITY TRAFFIC POLICE
   STATION, THIRUVANANTHAPURAM.

2. V.K.SATHEESH,
   RIDER POLICE CONSTABLE 8184, CITY TRAFFIC POLICE
   STATION, THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS: COMPLAINANT & STATE OF KERALA:

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1. SHAHUL HAMEED, S/O. ALI AHAMMED,
   SAJINA COTTAGE, CHITTATTUMUKKU P.O.,PUTHENTHOPPU,
   THIRUVANANTHAPURAM.

2. THE STATE OF KERALA,
   REP. BY ITS PUBLIC PROSECUTOR,HIGH COURT OF KERALA

BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.2358 OF 2006

Dated this the 20th day of December, 2006.

ORDER

The petitioners are the two accused in a prosecution initiated, inter alia, under Section 326 read with Section 34 I.P.C. The crux of the allegations against them is that they, in their capacity as Sub Inspector of Police and Police Constable, intercepted a vehicle of the complainant and made demands for illegal gratification. When that was not accepted, they allegedly dragged the complainant to the police station and assaulted him. Police conducted an investigation into the complaint of the complainant. The complaint was referred. Thereafter a protest complaint was filed by the respondent/complainant. The learned Magistrate took cognizance of the offences alleged against the petitioners. The petitioners appeared before the learned Magistrate. The matter underwent a number of adjournments. No evidence was adduced for various reasons. Ultimately since the respondent/complainant was not present on a final date of posting, the learned Magistrate proceeded to pass an order under Section 245(2) Cr.P.C, discharging the accused on the ground that the allegations are groundless.

2. The complainant took up the matter before the learned Sessions Judge and the learned Sessions Judge by the impugned order took the view that the complainant/revision petitioner is entitled one further opportunity to substantiate the allegations against the petitioners-police officials. In coming to that conclusion, the revisional court which took note of the nature of the allegations raised against the petitioners - of high handed acts of physical torture by police officials charged with the responsibility of upholding law and order with oblique motives. It was hence that the revisional court indulgently granted the respondent/complainant a further opportunity.

3. The learned counsel for the petitioners submits that the revision petition was filed after lapse of a long period of time and the learned Sessions Judge had unjustifiably condoned the delay in filing the revision petition. That order condoning the delay is not challenged in this proceedings and in these circumstances, I do not find any merit in that contention.

4. The learned counsel for the petitioners submits that the order passed by the Sessions Court in revision is liable to be quashed by invoking the powers under Section 482 Cr.P.C. Section 482 Cr.P.C is to be invoked sparingly and in exceptional

cases in aid of justice only. Compelling and satisfactory reasons must be shown to exist to justify the prayer for invocation of such powers. In the instant case, the complainant was absent. The competent court, at the revisional stage, held that termination of proceedings by invocation of the powers under Section 245(2) Cr.P.C is not justified. I must alertly note that the absence of the complainant, considering the nature of the allegations raised cannot lead to termination of proceedings under Section 249 Cr.P.C. In any view of the matter, I am not persuaded to agree that the order passed by the revisional court suffers from any such vice or results in miscarriage of justice as to justify the invocation of the powers under Section 482 Cr.P.C.

5. The learned counsel for the petitioners submits that great prejudice, hardship and inconvenience would result if personal appearance of the petitioners were insisted by the learned Magistrate on all dates of posting. It is for the petitioners to apply for exemption from such personal appearance. I have no reason to assume that such an application, if filed, will not be considered by the learned Magistrate on merits and in accordance with law. I find no reason why ritualistic insistence on the personal appearance of

the petitioners should be made in a case like the instant one. No specific direction appears to be necessary. Suffice it to say that the petitioners shall be at liberty to apply for exemption. The learned Magistrate must pass appropriate orders on merits on such application.

6. This Crl.M.C is, in these circumstances, dismissed with the above observations.

R.BASANT
JUDGE

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